

#### REMARKS

In response to the Office Action of June 13, 2001, Applicant requests re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132. Claims 2-4, 6, 8, 10-12, -14-16, 18, 19, and 21-28 are now pending in the case. All these claims, except new claim 28, have been rejected on the merits.

Claims 21 and 28 are the only independent claims remaining. Claim 21 has been amended to point out the unique operation and effects produced by the device.

#### Objections to the Claims

With regard to the Examiner's comments concerning claim 22, the claim refers to the changes in the sensory effect produced by the movement of the housing in relationship to the consumer or manipulator. The claim has been amended to more clearly state this relationship.

#### Rejections under 35 USC 112

Claims 2-4, 6, 8, 10-12, 14-16, 18-19, and 21-27 stand rejected as indefinite in the statement of the Markush group, in claim 21. The statement of the Markush group has been amended, as suggested by the Examiner. The amendment of claim 21 renders this rejection moot.

Rejection under 35 USC 102

Claims 2, 3, 4, 6, 21, 22, 24, and 25-27 stand rejected as anticipated by Filo et al. Filo et al teach a device that is pre-programmed to emit a certain sensory effect. This certain effect is unchangeable. In the preferred embodiment, a sound is transmitted to the inner ear through the bones of the face and head when a consumer or manipulator bites on the foodstuff. The intensity or volume or pitch of the sound cannot be changed from the pre-programed set, in contrast to the operation of the claimed device.

Claim 21, as now amended, sets forth the relationship of a changing sensory effect based on the manipulation and physical interaction by and between the device and the manipulator. This claimed function is supported by the disclosure at page 5, lines 8-12; page 7, lines 5-10, and 11-17; and page 9, lines 4-5, among other passages. Filo et al does not disclose such a function therefore, the reference does not anticipate the claim 21 nor any of the dependent claims.

With regard to new claim 28, Filo et al discloses the device with a switch which activates the device. When the consumer contacts the activated device with his/her teeth, the sound is perceived. Claim 28, on the other hand, recites a device that creates an open circuit by the consumer's hand contact with the

holder and closes the circuit when the foodstuff is contacted by the consumer.

Rejections under 35 USC 103

Claims 8, 10-12, 14-16, and 23 stand rejected as obvious in view of Filo et al. Filo et al teaches only the sensory effect of aural sound or physically transmitted sound. These claims depend on claim 21 and require a change in the sensory effect proportionate to the inter-relationship with the manipulator. Filo et al has no such teaching nor is there any suggestion that the device is capable of such a variable function. These claims specify the apparatus by which the variable effects are produced.

With regard to claim 23, to make a modification of Filo et al to incorporate electrical stimulation of the consumer would require a wholesale reconstruction of the device. There is no indication or suggestion in the Filo et al patent that any other sensory effect may be produced by the reference device.

Applicants' disclosure is the only teaching of such an invention and it is well settled in patent law that the applicants' disclosure cannot be used against them.

There is no teaching in Filo et al of electrical stimulation of the manipulator nor is there any motivation shown for anything other than using sound effects. Therefore, these claims are not obvious to one of ordinary skill in the art in view of Filo et al.

Claims 18-19 stand rejected as obvious in view of Filo et al and Bryan. Bryan teaches a form of bioluminescence by interaction of certain chemicals, for example a foodstuff, when treated with certain chemicals, will glow when contacted with other chemicals.

The claims require that a sound effect will change in relation to the amount of light passing through a foodstuff. Filo et al teaches a pre-programmed set of sounds that will be emitted when the device is activated by a switch. Neither Filo et al nor Bryan, nor a combination of both, teaches the claimed concept of variable sound based on the amount of light passing through a foodstuff. The claimed subject matter would not be obvious to one of ordinary skill in the art from the teachings of these references.

VERSION WITH MARKINGS TO SHOW CHANGES MADE

Amend the claims as follows:

3. (Once amended) The holding device of claim [1] 21, wherein: said output means includes a voltage-controlled oscillator; and said sound includes at least one tone produced by said voltage-controlled oscillator.

4. (Once amended) The holding device of claim [1] 21, wherein: said output means includes a speaker and a storage member; and said sound includes playback of at least one tone stored in said storage member.

6. (Once amended) The holding device of claim [1] 21, wherein: said output means includes a microphone adapted to detect sounds ; and said sound includes broadcasting of at least one tone detected by said microphone.

10. (Once amended) The holding device of claim [1] 21, wherein: said output means includes a control means, said control means regulates said sound based upon a capacitance of said circuit assembly, said capacitance being a product of [an] said interaction between [an individual] said manipulator and said foodstuff.

14. (Once amended) The holding device of claim [1] 10, wherein: said control means regulates said sound based upon a conductivity of said circuit assembly, said conductivity being a product of [an] said interaction between said [individual] manipulator and said foodstuff.

18. (Once amended) The holding device of claim [1] 10, wherein: said foodstuff is optically conductive; and said control means regulates said sound based upon an amount of light passing into a light registering member through said foodstuff.

21. (Once amended) The combination of a foodstuff and a holding device that produces different levels of a sensory effect [effects] based upon manipulation thereof by a manipulator, said holding device comprising a rigid housing assembly having a means for holding foodstuff and a foodstuff member removably secured to said rigid housing, said rigid housing assembly including output means for producing at least one sensory effect [of the] selected from the group consisting of sound, light, movement, vibration, electrical stimulation, [or] and odor generation at variable levels, a power supply for energizing said output means, said power supply being electrically coupled to said output means through a circuit assembly, said output means altering said levels of [for altering] said at least one sensory effect by physical interaction between said foodstuff member and said manipulator wherein said

manipulation causes corresponding changes in the level of said effect.

22. (Once amended) The combination of claim 21 further comprising said [rigid housing] output means producing said at least one sensory effect at a particular level of intensity and said [manipulation] physical interaction causes a distortion of said particular level of intensity of said at least one sensory effect.

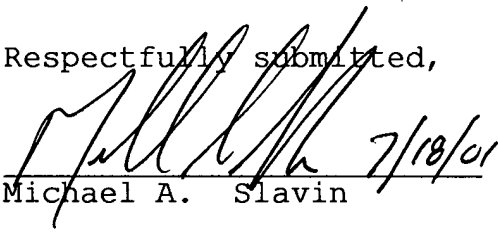
Add new claim:

28. The combination of a foodstuff and a hand held holding device that produces a sensory effect based on manipulation thereof by a manipulator, said holding device comprising a housing assembly for holding a foodstuff and a foodstuff member removably secured to said housing, said housing assembly including output means for producing at least one sensory effect, a power supply for energizing said output means, said power supply electrically coupled to said housing, said output means and said foodstuff through a circuit assembly, whereby said circuit is closed and a sensory effect is produced when said hand held housing is manipulated to bring said foodstuff in contact with said manipulator.

SUMMARY

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,

  
Michael A. Slavin

McHale & Slavin, P.A.  
4440 PGA Blvd., Suite 402  
Palm Beach Gardens, FL 33402  
(561) 625-6575 (Voice)  
(561) 625-6572 (Fax)

C:\FILES\CFR\2068.001 pat appl first response in CPA